

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

<b>RONALD BOUCHARD, ET AL.,</b>	)	
	)	
<b>Plaintiffs</b>	)	
	)	
<b>v.</b>	)	<b>Civil No. 96-286-B</b>
	)	
<b>THE WIDEWATERS GROUP, INC.,</b>	)	
	)	
<b>Defendant</b>	)	

***MEMORANDUM OF DECISION***<sup>1</sup>

The plaintiffs, Ronald Bouchard and Mary Rossignol, brought suit against their former employer, defendant The Widewaters Group, Inc., alleging that it unlawfully terminated them from their respective employments in retaliation for their having made complaints against their former supervisor. Specifically, the plaintiffs allege that by its actions, the defendant violated the anti-retaliation provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e - 2000h-6 (1994) (Title VII); the Americans with Disabilities Act, 42 U.S.C. §§ 12101 - 12213 (1995 & Supp. 1997) (ADA); the Maine Human Rights Act, 5 M.R.S.A. §§ 4551 - 4633 (1989 & Pamph. 1996) (MHRA); and the Maine Whistleblowers' Protection Act, 26 M.R.S.A. §§ 831 - 840 (1988). The defendant has moved for summary judgments on all counts of the plaintiff, Mary Rossignol's, complaint, including her claims for damages for emotional distress and for loss of enjoyment of life. The defendant also has moved for summary judgments on Bouchard's claims for damages for emotional distress and for loss of enjoyment of life. Concluding that no genuine issues of material fact exist with respect to Rossignol's claims, the Court grants the

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<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 73(b), the parties have consented to allow the United States Magistrate Judge to conduct any and all proceedings in this matter.

defendant's motion as it relates to her portions of the complaint. The Court denies, however, the motion as it relates to Bouchard's claims for damages for emotional distress and for loss of enjoyment of life.

## **I. Summary Judgment**

A summary judgment is appropriate only “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). An issue is genuine, for these purposes, if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “A material fact is one which has the ‘potential to affect the outcome of the suit under applicable law.’” *FDIC v. Anchor Properties*, 13 F.3d 27, 30 (1st Cir. 1994) (quoting *Nereida-Gonzalez v. Tirado-Delgado*, 990 F.2d 701, 703 (1st Cir. 1993)). The Court views the record in the light most favorable to the nonmovant. *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995).

## **II. Background**

This matter arises out of the termination of Bouchard and Rossignol on August 31, 1995, from their respective employments at the Aroostook Centre Mall in Presque Isle by their employer, The Widewaters Group. The plaintiffs claim that they experienced retaliatory termination in violation of Title VII, the ADA, the MHRA, and the Maine Whistleblowers’ Protection Act. The defendant claims that it fired the two due to their insubordination, their inability to cooperate with their supervisor, Patti Crooks, and, in Rossignol’s case, her failure to complete assigned projects satisfactorily.

At the time of their terminations, Bouchard was employed as operations superintendent at the mall, while Rossignol served as the mall's office manager. Both individuals had worked at the mall for approximately two years. Patti Crooks was hired by the defendant as the mall's manager in March 1995. At first, Bouchard and Rossignol seemed to get along well with her, but, after time, the two grew concerned about what they viewed as Crooks's offensive and possibly illegal conduct toward various mall employees. After unsuccessfully attempting to discuss their concerns with Crooks, herself, Bouchard and Rossignol co-authored a letter dated June 21, 1995, to The Widewaters Group informing it of Crooks's behavior and of their concern that it was having negative consequences on the mall's operation. In their letter, the two reported what they viewed as Crooks's offensive and gender-based remarks made to male employees, as well as her behavior toward two employees whom she perceived to be disabled. The two also described how Crooks's behavior was causing a good deal of work-related stress for employees. The plaintiffs attached to their faxed letter a copy of the minutes from a recent meeting between Crooks and male security staff in which Crooks used vulgar language and belittled their abilities as males.

In response to the plaintiffs' letter, the company conducted an investigation of the matter. The Widewaters Group held conference calls with Bouchard and Rossignol, as well as with two individuals familiar with the preparation of the minutes from the recent security meeting. After the latter two confirmed the plaintiffs' story of Crooks's language toward male security staffers, Crooks apparently was summoned to New York where she was reprimanded for her behavior. Rossignol claims that Crooks's behavior toward her changed greatly following the June 21 letter. Crooks reportedly began to express feelings of betrayal, anger, and mistrust toward Rossignol.

She no longer asked for Rossignol's opinion in work-related matters, and began to take work assignments away from her.

On August 31, 1995, one of the defendant's owners traveled to Presque Isle to fire both plaintiffs. The owner reportedly told the two that they were being terminated from their employments because they were uncooperative and because they had poor working relationships with Crooks. Bouchard and Rossignol subsequently filed complaints with the Maine Human Rights Commission, charging that The Widewaters Group had retaliated against them for having reported and opposed its agent's conduct. Right-to-sue letters were issued in October and November 1996 respectively by the Maine Human Rights Commission and by the Equal Employment Opportunity Commission.

The plaintiffs brought this action pursuant to the anti-retaliation provisions set forth in Title VII, 42 U.S.C. § 2000e-3(a); the ADA, 42 U.S.C. § 12203(a); the MHRA, 5 M.R.S.A. § 4633(1); and the Maine Whistleblowers' Protection Act, 26 M.R.S.A. §§ 833, 834-A. In addition to compensatory damages, including non-pecuniary losses, and punitive damages, the plaintiffs seek back and front pay, reinstatement, and costs. The defendant has moved for summary judgments on Counts I, II, III, and IV of plaintiff Rossignol's complaint, as well as on both of the plaintiffs' claims in each of their counts for compensatory relief in the form of damages for emotional distress and for loss of enjoyment of life.

### **III. Discussion**

"The ADA incorporates the procedures and enforcement mechanisms of Title VII, the basic statute prohibiting discrimination in employment. Accordingly, guidance on the proper analysis of [] [the plaintiffs'] retaliation claim[s] is found in Title VII cases." *Soileau v. Guilford*

*of Maine, Inc.*, 105 F.3d 12, 16 (1st Cir. 1997) (citations omitted). Courts also previously have noted that interpretation of the ADA and of the MHRA proceed hand in hand. *Id.* at 14 (citation omitted). Thus, to establish claims of retaliation under the federal and state statutes, the plaintiffs must demonstrate that they were engaged in protected conduct, that they were discharged, and that there was a causal connection between their discharges and their conduct. *Id.* at 16 (citations omitted).

**A. Whether the evidence generated by Rossignol fails to raise a genuine issue to support her claims that the defendant retaliated against her in violation of federal and state laws**

The defendant contends that a summary judgment should be entered on Counts I, II, and III of the plaintiffs' complaint as it relates to Rossignol because she has failed to offer sufficient disputed facts to support her claims that the defendant retaliated against her for having reported possible violations of federal and state anti-discrimination laws. In particular, the defendant contends that because Rossignol's complaints to her employer did not evince a reasonable belief of discriminatory conduct, and because Rossignol's statements demonstrate at most that she believed she was reporting discourteous or inappropriate behavior on the part of her supervisor instead of actual violations of the law, her claims must fail.

Rossignol's claims essentially stem from the following language set forth in Title VII:

It shall be an unlawful employment practice for an employer to discriminate against any of his employees . . . because [] [the employee] has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

42 U.S.C. § 2000e-3(a).<sup>2</sup> Her Title VII claim of retaliation is based on both the "participation" and the "opposition" clauses set forth above. That is, Rossignol made a charge to the MHRC and the EEOC and opposed what she viewed to be gender and disability discrimination. The participation clause does not require that one's charges be valid or even reasonable. *Wyatt v. City of Boston*, 35 F.3d 13, 15 (1st Cir. 1994). A claim concerning the opposition clause does, however, require "that the employee have a reasonable belief that the practice the employee is opposing violates Title VII." *Id.*

As noted above, Rossignol did report the possible gender and disability discrimination to The Widewaters Group. In view of the fact that such a report is a protected activity under the relevant statutes, *see Hoepfner v. Crotched Mountain Rehabilitation Ctr.*, 31 F.3d 9, 14 (1st Cir. 1994) (Title VII context); *Braverman v. Penobscot Shoe Co.*, 859 F. Supp. 596, 604 (D. Me. 1994) (ADA context), and because Rossignol was terminated from employment after she reported the incidents of alleged discrimination, there is little dispute that Rossignol has

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<sup>2</sup> The anti-retaliation provision set forth in the Americans with Disabilities Act provides:

No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

42 U.S.C. § 12203(a) (1995).

The anti-retaliation provision set forth in the Maine Human Rights Act provides:

A person may not discriminate against any individual because that individual has opposed any act or practice that is unlawful under this Act or because that individual made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this Act.

5 M.R.S.A. § 4633 (Pamph. 1996).

established the first two elements of her retaliatory discharge claims. *Hoepfner*, 31 F.3d at 14. The issue then is whether Rossignol has failed to present sufficient evidence of a causal link between her report and her subsequent discharge to defeat the defendant's motion for summary judgments. *Id.* The Court concludes that because Rossignol's evidence, particularly that contained in her statement of material facts, is insufficient to support a finding that the defendant's true reason for discharging her was her report of gender or disability discrimination, the defendant's motion on these counts must be granted.<sup>3</sup>

The Court's review of the record convinces it that Rossignol has failed to present sufficient evidence to support any theory of a causal connection between her report and her subsequent discharge from employment. No genuine issues of material fact on Counts I, II, and III exist for a trial. Rossignol's evidence in support of her Title VII, ADA, and MHRA retaliation claims basically consists of her having observed secondhand minutes from a security meeting at which her supervisor, Crooks, used profane language in her discussions with male staff members and told them that ladies could produce more work than men; that Crooks had stated once that she "had no use for men"; that Crooks was causing undue mental stress among employees in the work environment (one employee had visited the doctor for treatment of stress); that Crooks delved into employees' personal lives; that Crooks once inquired of an employee whether she was

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<sup>3</sup> The parties have gone to great lengths in their briefs in examining whether Rossignol possessed a reasonable belief that her supervisor's conduct violated federal and state laws. Such an inquiry is not dispositive of the real issue at hand, however, in view of the fact that the reasonableness inquiry applies only to the opposition clause language of the relevant statutes. Rossignol's claims are not solely predicated on her opposition to her supervisor's conduct. Instead, what matters most is whether Rossignol, in response to the defendant's motion, has met her burden of establishing a *prima facie* case of retaliatory termination under the applicable laws.

taking birth control; that Crooks told another employee to take medication for a perceived disability, attention deficit disorder, in order to keep his job; and that a certain female employee was perceived by Crooks to have a mental disorder.

Although Rossignol focuses to her detriment in her argument on whether she had a reasonable belief that discrimination was occurring rather than on the causal link required to succeed, presumably part of the evidence she intended to offer in support of a *prima facie* case includes: Rossignol's statements that once she became aware of the above behavior on Crooks's part, she discussed it with Bouchard and, as a result of their shared concern for the work environment and the law, they jointly composed a letter describing the above and faxed it to The Widewaters Group in New York; that, as a direct result of her role in composing the letter, her supervisor became aware of her part in the report and began treating her poorly; and that, after a brief time, the management in New York, believing that the letter contained allegations of discrimination, decided to fire Rossignol as a result of her having reported possible violations of the law.

Litigants must be mindful that:

[e]ven in discriminatory discharge cases, where the plaintiff can rarely present direct, subjective evidence of an employer's actual motive, the plaintiff cannot survive summary judgment with 'unsupported allegations and speculations,' but rather must 'point to specific facts detailed in affidavits and depositions -- that is, names, dates, incidents, and supporting testimony -- giving rise to an inference of discriminatory animus.

*Hoepfner*, 31 F.3d at 14 (quoting *Lipsett v. University of Puerto Rico*, 864 F.2d 881, 895 (1st Cir. 1988)). Because Rossignol has failed to satisfy the above requirements, and because her "accusations remain largely conclusory and lacking in the concrete documentation necessary to



prove the causal link between her protected activity and her retaliatory treatment," *Ramos v. Roche Products, Inc.*, 936 F.2d 43, 49 (1st Cir.), *cert. denied*, 502 U.S. 941 (1991), her claims of retaliatory termination under Title VII, the ADA, and the MHRA cannot survive the defendant's motion for summary judgments on Counts I, II, and III of the complaint as it relates to her.

**B. Whether the evidence generated by Rossignol fails to raise a genuine issue to support her claim that the defendant retaliated against her in violation of the Maine Whistleblowers' Protection Act**

Rossignol fares no better with her claim pursuant to the Maine Whistleblowers' Protection Act. The relevant portions of that statute provide:

**Discrimination prohibited.** No employer may discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because:

The employee, acting in good faith, or a person acting on behalf of the employee, reports orally or in writing to the employer or a public body what the employee has reasonable cause to believe is a violation of a law or rule adopted under the laws of this State, a political subdivision of this State or the United States; . . . .

26 M.R.S.A. § 833(1)(A). In moving for a summary judgment on Count IV of Rossignol's complaint, the defendant contends that because Rossignol failed to offer any evidence that she brought a direct complaint of illegal conduct to her employer's attention based on any reasonable belief, her claim must fail.

As with the opposition clause of Title VII, the Maine Whistleblowers' Protection Act "requires an employee to prove that a reasonable person might have believed that the employer was acting unlawfully." *Bard v. Bath Iron Works Corp.*, 590 A.2d 152, 155 (Me. 1991). The Court simply cannot conclude, based on the evidence presented, that a genuine issue of fact exists regarding whether Rossignol possessed a reasonable belief that she was reporting illegal

conduct on the part of her supervisor. *Id.* at 154. The Court also concludes, as noted above, that Rossignol has generated insufficient evidence to support a finding of a causal link between her termination and her reporting incidents of possibly illegal behavior. Thus, a summary judgment in favor of the defendant is entered on this count, as well.

**C. Whether the evidence generated by the plaintiffs fails to raise a genuine issue to support their claims for damages for emotional distress and for loss of enjoyment of life**

The defendant has moved for summary judgments on both Bouchard's and Rossignol's claims for damages for emotional distress and for loss of enjoyment of life as sought in each count of their complaint. Because the Court has granted the defendant's motion for summary judgments on all of the counts in Rossignol's complaint, her claims for damages in connection with the underlying claims are no longer before the Court. With respect to Bouchard, the defendant claims that because he failed to offer any corroborating evidence to support his claims, summary judgments are warranted on his claims for damages, as well.

The defendant not having sought a summary judgment on any of Bouchard's counts in the complaint, his claims remain for trial. The Court is satisfied that enough evidence exists in the record to permit his claims for damages to remain. Contrary to the defendant's contention on this issue, the Court is satisfied that sufficient facts have been generated by Bouchard to raise triable issues on whether he incurred injuries in connection with emotional distress and loss of enjoyment of life. Causal connections between the statutory violations and the alleged injuries may be established further, if at all, at the trial. Accordingly, the defendant's motion for summary judgments on Rossignol's claims for damages for emotional distress and for loss of enjoyment of life is granted, but is denied with respect to Bouchard's claims for the same.

#### **IV. Conclusion**

For the foregoing reasons, the defendant's motion for summary judgments on Counts I, II, III, and IV of the plaintiff, Mary Rossignol's, complaint, including her claims for damages for emotional distress and for loss of enjoyment of life, hereby is **GRANTED**. The motion is **DENIED**, however, as it relates to the plaintiff, Ronald Bouchard's, claims for damages for emotional distress and for loss of enjoyment of life.

***SO ORDERED.***

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Eugene W. Beaulieu  
U.S. Magistrate Judge

Dated this 1st day of July, 1997.